

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MONTANA  
MISSOULA DIVISION

DEIDRE LECHOWSKI-MERCADO, and  
OWEN MERCADO,

Plaintiffs,

vs.

SEELY SWAN HIGH SCHOOL, and  
MISSOULA COUNTY PUBLIC  
SCHOOL DISTRICT, a department of  
MISSOULA COUNTY, MT,

Defendants.

CV 21-10-M-DLC

ORDER

Before the Court are Defendants' motions for orders compelling Phil A. Hamilton and Dr. Nadine Wisniewski to comply with subpoenas. (Docs. 40; 42.) Defendants request that this Court order Mr. Hamilton and Dr. Wisniewski to respond to the third-party subpoenas served upon them on November 5, 2021. (Docs. 41 at 1; 43 at 1.) Plaintiffs' object. (Doc. 46.) For the reasons stated herein, the Court will order Mr. Hamilton and Dr. Wisniewski to comply with the subpoenas served upon them on or before February 28, 2021.

As this Court has previously stated:

A validly issued Rule 45 subpoena is not a mere request and the party to which it is directed is under a legal obligation to comply. *Sali v. Corona Regional Med. Ctr.*, 884 F.3d 1218, 1224 (9th Cir. 2018).

“[D]efiance of a subpoena is . . . an act in defiance of a court order.” *Sell v. Country Life Ins. Co.*, 2017 WL 5713885, \*3 (D. Ariz. 2017). Accordingly, any person “who, having been served, fails without adequate excuse to obey the subpoena or an order related to it” may be held in contempt. Fed. R. Civ. P. 45(g).

(Doc. 28 at 3.) It appears that Dr. Wisniewski has attempted in good faith to comply with the subpoena served on her by the Defendants. (Docs. 43-3; 43-4; 43-5.) But it also appears Defendants have been flexible, continuing to afford her extensions to produce the documents sought through the subpoena, without success. (*Id.*) Apparently, Mr. Hamilton has not responded at all to the subpoena served upon him. (Doc. 41-3.) The Court will afford Mr. Hamilton and Dr. Wisniewski additional time to comply, before considering whether additional action is needed.

Plaintiffs’ objection to Defendants’ motions offers little justification for not affording Defendants the relief they seek. (Doc. 46.) Plaintiffs have placed their mental and emotional condition at issue by advancing claims for emotional distress. (*See generally* Doc 1.) There is a pending motion to amend that does not abandon these claims. (*See generally* Doc. 37-1.) Accordingly, the Court finds that the subpoenas at issue aim at relevant informational targets and finds no reason to deny their request for responsive information.

The Court notes that the papers associated with this motion reference the possibility that Dr. Wisniewski has already been deposed. (Doc. 43-5 at 4–5.) If

she has, then Defendants' motion as to her may very well be moot. (Doc. 43.) The Court has not received any notice of compliance and Defendants have not otherwise sought to withdraw their motions. As such, the Court will order Mr. Hamilton and Dr. Wisniewski to comply with the subpoenas served upon them within the time frame enumerated below.

Accordingly, IT IS ORDERED that the motions (Docs. 40; 42) are GRANTED.

IT IS FURTHER ORDERED that on or before February 28, 2022, Mr. Hamilton and Dr. Wisniewski shall fully comply with the subpoenas served upon them. Mr. Hamilton and Dr. Wisniewski are warned that the failure to comply with this Order on or before this date, absent an extension approved by the parties or this Court, may result in a formal contempt citation.

IT IS FURTHER ORDERED that Plaintiffs shall, without delay, serve a copy of this Order on both Mr. Hamilton and Dr. Wisniewski in conformance with the procedure outlined for subpoenas under Rule 45(b).

DATED this 8th day of February, 2022.



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Dana L. Christensen, District Judge  
United States District Court